

### Remarks

This is in response to the non-final Office Action mailed on July 29, 2004. Claim 30 has been canceled without prejudice or disclaimer. Claims 29 and 38 have been amended. Claims 24-29 and 31-39 remain pending. Reconsideration and allowance are respectfully requested for the following reasons.

#### I. Claim Rejections - 35 U.S.C. § 102

In section 2 of the Action, claims 24, 25, 27, 29, and 36 were rejected under 35 U.S.C. § 102(b) as being anticipated by McCarthy, IE 80484 B3. This rejection is respectfully traversed, and reconsideration is requested for at least the following reasons.

Claim 24 is directed to a proximity warning system for a fireplace. Claim 24 recites, among other limitations, a monitor module coupled to the fireplace to automatically turn on to sense when an object enters a zone proximate to the fireplace.

McCarthy discloses an electronic fire guard that includes a power switch 5 that controls the power input to the device. McCarthy, Figure 2 and p. 7, ll. 30 and 31. When the switch is activated, power is supplied to the unit, and the unit enters an armed mode. McCarthy, p. 5, ll. 12, 13, and 18-20. Therefore, the guard disclosed by McCarthy is manually turned on and off by power switch 5.

In contrast, claim 24 recites a system including a monitor module that automatically turns on. For example, dependent claim 29 recites that the monitor module is configured to automatically turn on when the fireplace reaches an unsafe temperature. Because McCarthy discloses a guard that is manually turned on and off with a switch, McCarthy fails to disclose a monitor module that automatically turns on, as recited by claim 24. Reconsideration and allowance of claim 24, as well as claims 25 and 27 that depend therefrom, are respectfully requested for at least these reasons.

Claim 36 is directed to a method for warning when an object approaches a fireplace. Claim 36 recites, among other limitations, turning on a monitor module automatically. For at least reasons similar to those provided above with respect to claim 24, McCarthy fails to disclose or suggest turning on a monitor module automatically, as recited by claim 36. Reconsideration and allowance are respectfully requested.

## **II. Claim Rejections - 35 U.S.C. § 103**

In section 5 of the Action, claims 26, 28, 30, 35, 37, and 39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over McCarthy. This rejection is respectfully traversed, and the correctness of the rejection is not conceded.

However, claims 26, 28, 35, 37, and 39 all depend from one of claims 24, 31, and 36 and should be allowable for at least the same reasons as those provided herein for claims 24, 31, or 36, respectively. Reconsideration and allowance are respectfully requested.

## **III. Double Patenting**

In section 7, claims 29, 31-34, and 38 were rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 1 and 10-15, respectively, of U.S. Patent No. 6,672,860 (the '860 patent). This rejection is respectfully traversed, and reconsideration is requested for at least the following reasons.

Claim 29 of the present application recites that the monitor module is configured to automatically turn on when the fireplace reaches an unsafe temperature. Claim 1 of the '860 patent does not recite this limitation and is therefore not directed at the same invention. Reconsideration and allowance are respectfully requested.

Claim 10 of the '860 patent recites a first capacitor and a second capacitor. In contrast, claim 31 of the present application does not recite either a first capacitor or a second capacitor and therefore is not directed at the same invention as that recited by claim 10 of the '860 patent. Reconsideration and allowance of claim 31, as well as claims 32-34 that depend therefrom, are respectfully requested.

Claim 38 of the present application now depends from claim 37. Reconsideration and allowance are respectfully requested.

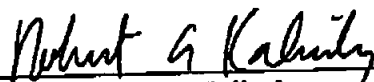
## **IV. Conclusion**

The remarks set forth above provide certain arguments in support of the patentability of the pending claims. There may be other reasons that the pending claims are patentably distinct over the cited references, and the right to raise any such other reasons or arguments in the future is expressly reserved.

Favorable reconsideration is respectfully requested. Please contact the undersigned attorney with any questions regarding this application.

Respectfully submitted,  
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